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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

TYRRALL FARROW CANNON,

Plaintiff and Appellant,

v.

RIVERSIDE COURT OF APPEAL  
et al.,

Defendants and Repondents.

D049096

(Super. Ct. No. RIC441198)

APPEAL from an order of the Superior Court of Riverside County, Gloria C.  
Trask, Judge. Affirmed.

Tyrrall Farrow Cannon, acting in propria persona, appeals from an order sustaining a demurrer to his complaint filed against Riverside County, attorney Jeffrey J. Stuetz, and Associate Justices Thomas Hollenhorst, Barton Gaut and Betty Richli (respondent justices). The trial court sustained the demurrer of the respondent justices without leave to amend on grounds Cannon did not allege sufficient facts to state a cause

of action because judicial immunity protected the respondent justices' acts; he did not allege compliance with government claims filing requirements; and he did not particularly allege facts establishing any liability against the respondent justices. On appeal, Cannon does not address the procedure or merits of the trial court's order, or cogently explain why his complaint states a viable cause of action. Nor does Cannon comply with the Rules of Court applicable to the substance and form of his briefs. We conclude Cannon has abandoned his appellate contentions to the extent they are ascertainable, and he has not overcome the legal presumption in favor of the correctness of the court's order. We therefore affirm the order.

#### FACTUAL AND PROCEDURAL BACKGROUND

In December 2005, Cannon, who is incarcerated in state prison following his criminal convictions for simple assault and corporal injury to a spouse (see *People v. Cannon* (June 16, 2004, E033596) [nonpub. opn.]), filed a Judicial Council form complaint for personal injuries together with an "addendum" complaint for breach of contract against Riverside County, attorney Jeffrey Stuetz and respondent justices of the Fourth District, Division Two Court of Appeal. Respondent justices had affirmed his convictions on appeal.<sup>1</sup> (*People v. Cannon, supra*, E033596.) In his personal injury

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<sup>1</sup> We take judicial notice of the prior opinion of the Fourth District, Division Two Court of Appeal in *People v. Cannon, supra*, E033596. (Evid. Code, §§ 451, subd. (a), 452, subd. (a), 459; *People v. Woodell* (1998) 17 Cal.4th 448, 455; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [reviewing court may consider matters that may be judicially noticed in reviewing sufficiency of complaint on general demurrer]; *McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1491 [trial and appellate courts

complaint, Cannon checked causes of action for "General Negligence" and "Other," which he identified as, "Denied citizenship and the rights to make and enforce contract by conspiracy, 'RICO.' " Cannon alleged he had suffered violations of his civil rights, constitutional rights, rights to make and enforce contracts, and his right to be free from "suffer[ing] the effects of Genocide, false imprisonment, [and] kidnapping" stemming from an "abuse of the legal system" and "conspiracy." He further alleged the respondent justices had acted jointly with his state appointed attorney to "knowingly defeat[] the Constitution of the United State[s] and give[] power, and comfort to the enemy." Cannon made additional vague allegations of civil rights violations in a handwritten attachment, including that the trial court and state court officials denied him his rights of "citizenship" and to be "forever free from condition of slavery [*sic*]." Cannon's contract complaint contained similar allegations, namely that he suffered breach of contract for "civil rights violation" and denial of "immunities and liberty." Handwritten in the "other" section where he was to set forth additional causes of action, Cannon purported to allege a cause of action for "[s]ubjecting Black citizen [*sic*] to acts of Genocide, slavery by breach of sworn duty to uphold the constitution and up-root slavery . . . by way of intentionally maliciously abuse [*sic*] the Rules, Procedures of the Court, knowingly kidnapping for the purpose of profit and slavery." He alleged he was deprived of his right "to be free from abuse of state court arbitrary action to enforce contracts prior to amended state statute,

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ruling on a demurrer may properly take judicial notice of a party's earlier pleadings and positions as well as established facts from the same case and other cases].)

denied right to suffer pains and punishment that white do and distruction [*sic*] of family life and marriage union."

Respondent justices demurred to the complaint on grounds Cannon did not state facts sufficient to constitute a cause of action under Code of Civil Procedure section 430.10, subdivision (e) because their actions were protected by absolute judicial immunity; Cannon had failed to allege compliance with the claim filing requirements of the Government Code; and he had not alleged with particularity sufficient material facts to establish liability against the respondents. They further asserted the trial court had no subject matter jurisdiction because Cannon had not complied with the filing fee provisions of the Government Code. They sought an order sustaining their demurrer without leave to amend.

With the exception of the issue of subject matter jurisdiction, the trial court sustained the demurrer without leave to amend on the grounds stated above. It entered judgment that Cannon take nothing on his complaint. Cannon filed the present appeal.

## DISCUSSION

### *I. Forfeiture of Appellate Contentions*

We first address respondent justices' argument that Cannon has abandoned his appellate claims of error by failing to comply with Rules of Court relevant to the substance and procedure of his appellate briefs. The argument has merit.

Cannon's appellate briefs – as best we are able to understand the disjointed arguments made therein – do not address the trial court's order sustaining the demurrer. Cannon does not provide any citations to the appellate record to support the factual,

procedural, and legal assertions set forth in his opening brief. His briefs contain many factual assertions outside the record on appeal. Cannon's reply brief is somewhat better structured having a table of contents and some headings, but it likewise omits citations to the record. The reply brief, as does the opening brief, makes assertions similar to those contained in Cannon's complaint, rather than addressing the issues forming the basis of his appeal as it should. The reply brief touches upon, but does not meaningfully discuss or analyze with any authority, the issue of whether the trial court erred in sustaining respondents' demurrer without leave to amend.

California Rules of Court, rule 8.204 provides that each appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) The rule requires that an appellant's opening brief must "state the nature of the action, the relief sought in the trial court, and the judgment or order appealed from, and it must "[p]rovide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204(a)(2)(A), (C).) Statements of fact not part of, or supported by, citations to the record on appeal are improper and cannot be considered on appeal. (Cal. Rules of Court, rule 8.204(a)(2)(C); *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) " 'If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived.' " (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246, fn. 14; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; see also *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Guthrey v. State of California*

(1998) 63 Cal.App.4th 1108, 1115.) We are not required to search the record to determine whether it contains support for Cannon's contentions. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.) Because Cannon's opening brief does not contain any citations to the appellate record to support his assertions of fact, procedure and law, we consider his contentions on appeal forfeited. (*Nwosu*, at p. 1247; *City of Lincoln*, at p. 1239; *Duarte*, at p. 856; *Guthrey*, at p. 115.)

In reaching our conclusion, we are mindful that Cannon represents himself on appeal. However, his status as a party appearing in propria persona does not provide a basis for preferential consideration. "A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater[,] consideration than other litigants and attorneys.' [Citation.] Indeed, 'the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' " (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

## II. *Failure to State a Cause of Action*

Though we need not turn to the merits, were we to do so, we would conclude the trial court did not err in sustaining the demurrer of respondent justices. We apply the following settled standard of review to an order sustaining a demurrer without leave to amend: "The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a

demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) The burden is on Cannon to demonstrate the manner in which the complaint could be amended to state a viable cause of action. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386.)

Because Cannon has not made arguments on appeal directed to the court's order sustaining the demurrer, he cannot overcome the presumption that an appealed judgment is correct (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564) and the requirement that an appellant must present a record sufficient to overcome that presumption. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1053.) Applying this presumption, we conclude the court correctly sustained respondents' demurrer on grounds judicial immunity barred his lawsuit.

We may properly take judicial notice of the fact that respondent justices affirmed Cannon's criminal convictions. (See footnote 1, *ante*.) Respondent justices demurred in part on grounds that their conduct is protected by the doctrine of judicial immunity. "It is well established judges are granted immunity from civil suit in the exercise of their judicial functions. [Citations.] This rule applies even where the judge's acts are alleged to have been done maliciously and corruptly. [Citations.] The rule is based on 'a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own

convictions, without apprehension of personal consequence to himself." ' [Citation.]

Judicial immunity is a principle of common law which is necessary for the welfare of the state and the peace and happiness of society. [Citations.] Judicial immunity from a civil action for monetary damages is absolute.' " (*Regan v. Price* (2005) 131 Cal.App.4th 1491, 1495.) Immunity exists for judicial actions that relate to a function normally performed by a judge and where the parties understood they were dealing with the judge in his official capacity. (*Ibid.*; *Olney v. Sacramento County Bar Assn.* (1989) 212 Cal.App.3d 807, 811.)

Having searched the allegations of Cannon's complaints and interpreting them liberally as we must, we are nevertheless unable to find any clear allegations of nonjudicial action, that is, action by Respondent justices that was not performed in connection with their duties to review and render a decision on the appeal of Cannon's criminal convictions. Cannon's allegations of conspiracy and denial of due process, equal protection and other asserted rights are alleged to have occurred "by way of abuse of legal system," "abuse [of] Rules, Procedures of the Court" and "while in the color of authority." Thus, the judicial actions of respondent justices appear to be the subject of his present complaint. On the application of judicial immunity alone, we conclude the trial court did not err in sustaining the demurrer of respondent justices.

### III. *Leave to Amend*

"[I]t is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Bragg v. Valdez* (2003) 111 Cal.App.4th 421, 428; *Hendy v.*



*Losse* (1991) 54 Cal.3d 723, 742.) Cannon bears the burden of demonstrating a reasonable possibility that he may cure defects by an amendment, by showing in what manner the complaint can be amended and how that amendment will change the legal effect of the pleadings. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318; *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 375.)

Cannon has not met this burden. He has not argued on appeal that the trial court abused its discretion by not allowing him to further amend his complaint, or that he can further amend the complaint to allege facts constituting a cause of action. Accordingly, we must conclude the court did not abuse its discretion in granting respondents' demurrer to the complaint without leave to amend. (*Hendy v. Losse, supra*, 54 Cal.3d at pp. 742-743; *Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 7.)

#### DISPOSITION

The order is affirmed.

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O'ROURKE, J.

WE CONCUR:

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HALLER, Acting P. J.

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IRION, J.